

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: JAMES P. WALTZ	:	Chapter 13
	:	
Debtor	:	Bankruptcy No. 16-15811-mdc
	:	Date: 6/29/17
	:	Time: 11:00 a.m.
	:	Courtroom # 2
	:	900 Market Street
	:	Philadelphia, PA

**CALN TOWNSHIP MUNICIPAL AUTHORITY'S**  
**MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

Caln Township Municipal Authority, by and through its undersigned counsel, hereby moves this Honorable Court for Relief from the Automatic Stay, pursuant to Section 362(d) of the Code, and in support thereof states as follows:

1. Debtor, James P. Waltz is an adult individual, *sui juris*, whose address is 1107 Scott Drive, Coatesville, Chester County, Pennsylvania 19320.
2. Movant Caln Township Municipal Authority (hereinafter, "CTMA"), is a municipal authority duly incorporated by the Township of Caln under the laws of the Commonwealth of Pennsylvania. The Authority's address is 253 Municipal Drive, Thorndale, Pennsylvania 19372
3. The Bankruptcy Court has jurisdiction over this matter, which is a core matter, pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157(a) and (2)(G) and 11 U.S.C. § 362.
4. Venue of this Court is predicated upon 28 U.S.C. § 1409.
5. On or about February 18, 2016, CTMA submitted a Minor Act 537 Update Revision Plan to the Commonwealth of Pennsylvania Department of Environmental Protection.
6. The subject of the Update Revision Plan is a proposed public sanitary sewer extension Project located along Dogwood Lane, Scott Drive and Blackhorse Hill Road in Caln

Township, Chester County, Pennsylvania. The Update Revision Plan consists of the extension and connection to a CTMA public sewer treatment and disposal facility via a low pressure pump system to 69 existing homes presently served by on-lot septic systems in an area with documented on-lot septic system malfunctions

7. The Chester County Department of Community and Economic Development has awarded the Project a grant in the amount of \$290,000 towards a portion of the Project costs.

8. In order to effectuate construction of the Project, the acquisition of a grant of easement to the CTMA from the fifty-five (55) affected property owners for a twenty (20) foot portion of the rear of their respective parcels must be obtained by the CTMA.

9. The only property of the fifty-five affected by the Project the CTMA has been unable secure an easement from is James P. Waltz ("Debtor") who possesses a title interest to the parcel located at 1107 Scott Drive, Coatesville, Pennsylvania; parcel number 39-3G-0031 (the "Property").

10. Title of record to the Property appears in the name of Irene O. Newman, Virgil H. Newman (deceased), Marjorie M. Newman and Debtor by virtue of deed from Henry and Catherine Tobelmann dated May 21, 29189 and recorded June 6, 1989 in the Chester County Pennsylvania Recorder of Deeds in Record Book 1567, page 364.

11. By letter dated August 19, 2016, CTMA mailed a request for the necessary easement and a Project description to the title holders at the Property.

12. After receiving no response, by letter dated October 24, 2016, CTMA mailed a second notice of a request for easement and Project description to the title holders at the property.

13. Again after receiving no response, by letter dated November 15, 2016, CTMA mailed a final notice of request for easement, the Project description and notice that the Board of Directors of CTMA would consider adopting a Resolution authorizing the acquisition of the easement across the Property by condemnation. A true and correct copy of the November 15, 2016 letter is attached hereto and incorporated herein, marked as Exhibit "A".

14. On December 12, 2016, the Board of Directors adopted Resolution 2016-9-CTMA authorizing the taking of the necessary easement via condemnation proceedings. A true and correct copy of Resolution 2016-9 is attached hereto and incorporated herein, marked as Exhibit "B".

15. The Title and Lien Search performed on the Property on the behalf of CTMA dated July 14, 2016, revealed the bankruptcy filing of Irene O. Newman. As a result, CTMA delayed its Condemnation action until the resolution of Ms. Newman's bankruptcy matter.

16. Upon the close of Ms. Newman's bankruptcy matter, CTMA filed its Condemnation action in the Chester County, Pennsylvania Court of Common Pleas on March 6, 2017 at Docket No. 2017-023249-RC.

17. Upon receipt of the Notice of Condemnation, Mr. Waltz's Mortgagee, PNC Bank alerted CTMA of the above-captioned bankruptcy matter of Mr. Waltz.

18. The CTMA requests the easement over the Property to promote a compelling public interest — to extend sewer lines to carry effluent from properties with failing on-lot systems to a treatment disposal facility.

19. 11 U.S.C. 362(b)(4) exempts for the automatic stay: "the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment

other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power".

20. The condemnation of the easement of the property of the Debtor constitutes a proceeding by a governmental unit to enforce such governmental organization's police and regulatory power and thus is exempted from the automatic stay.

21. On the facts set forth above, continuation of the automatic stay will irreparably damage the CTMA Project.

WHEREFORE, Caln Township Municipal Authority respectfully requests that this Court enter an order lifting the Automatic Stay and allowing Caln Township Municipal Authority to proceed with the pending Chester County condemnation action for a portion of 1107 Scott Drive, Coatesville, Pennsylvania to effectuate its sewer extension Project.

Respectfully submitted,

Lamb McErlane, PC

Dated: June 1, 2017

By: /s/ Guy A. Donatelli  
Guy A. Donatelli  
Pa. I.D. # 44205  
24 East Market Street  
West Chester, PA 19381  
610-430-8000  
Attorney for Caln Township  
Municipal Authority

LAMB | McERLANE<sup>PC</sup>  
ATTORNEYS AT LAW

Vincent M. Pompo  
Voice (610) 430-8000  
Fax (610) 692-6210  
[vpompo@lambmcerlane.com](mailto:vpompo@lambmcerlane.com)

December 23, 2016

Via U.S. Certified Mail and First Class

Irene Ollie Newman  
Marjorie May Newman  
James P. Waltz  
1107 Scott Drive  
Coatesville, PA 19320

RE: 1107 Scott Drive  
Tax Parcel No. 39-3G-31  
CTMA Dogwood/ Scott Drive Sewer Extension Project

Dear Ms. Irene Newman, Ms. Marjorie Newman and Mr. Waltz:

This office serves as Solicitor to the Caln Township Municipal Authority. By letter dated August 19, 2016, the Authority sent to you for your signature a permanent sanitary sewer easement and other documentation for your property necessary for the Dogwood/Scott Drive Sewer Extension Project. By letter dated October 24, 2016, the Authority sent you a second notice again requesting that you return the signed easement documents to the Authority, and advising that if the Authority did not receive a response, it would refer the matter to this office for appropriate legal action. By letter dated November 15, 2016, we advised that since the Authority did not receive your signed easement documents, on my recommendation the Authority would consider at its public meeting of December 12, 2016 to adopt a resolution authorizing the acquisition of the easement by condemnation. Accordingly, enclosed please find a copy of Resolution No. 2016-9-CTMA authorizing this office to file a declaration of taking in the Chester County Court of Common Pleas. Upon the filing of the declaration of taking, the Authority will own the easement.

In the event a declaration of taking is filed, you will have the opportunity to challenge the condemnation under the Eminent Domain Code. You will also have the opportunity to seek damages under the Code. The Code allows for payment toward reasonable expenses actually incurred by you for appraisal, attorney and engineering fees. Where the condemnation is for underground sewer infrastructure, as here, the amount of total reimbursement for appraisal, attorney and engineering fees is limited by the Code to \$1,000. All of the Authority's costs for the condemnation including damages, reimbursed fees, and the Authority's appraisal, attorney and engineering fees, will be added to the Project costs. All Project costs, less the amount of the Project grant awarded by the County, will be paid by tapping fees collected from those properties connecting to the sewer extension.



Irene Ollie Newman  
Marjorie May Newman  
James P. Waltz  
December 23, 2016  
Page 2

You can avoid the filing of the declaration of taking by returning the signed documents that were sent to you along with the August and October letters to this office as soon as possible but no later than January 9, 2017.

Should you or your legal representative have any questions, or if you need any assistance in signing the documents, please contact me at (610) 701-4411.

Very truly yours,

LAMB MCERLANE PC

By: 

Vincent M. Pompo

VMP/sg

Enclosure – Resolution No. 2016-9-CTMA

cc: Caln Township Municipal Authority  
Scot Gill, Authority Director of Operations  
William Dingman, P.E., Authority Engineer

**CALN TOWNSHIP MUNICIPAL AUTHORITY  
CHESTER COUNTY, PENNSYLVANIA**

**RESOLUTION NO. 2016-9-CTMA**

**A RESOLUTION AUTHORIZING THE CONDEMNATION AND ACQUISITION OF A SANITARY SEWER EASEMENT THROUGH A PORTION OF CERTAIN LANDS NOW OR LATE OF IRENE OLLIE NEWMAN, VIRGIL H. NEWMAN (DECEASED), MARJORIE MAY NEWMAN, AND JAMES P. WALTZ (UPI NO. 39-3G-31 ) WITHIN THE TOWNSHIP OF CALN, CHESTER COUNTY, FOR THE PURPOSE OF PUBLIC SEWER IMPROVEMENTS.**

**WHEREAS**, the Caln Township Municipal Authority and the Township of Caln, after extensive investigation, inquiry and analysis, have determined that is in the public interest and for the benefit of the public and for the present and future use of the Township's citizens to undertake the construction of a municipal force main and sanitary sewer extension known as the Dogwood/Scott Drive Sewer Extension to serve portions of the Township (the "Project"); and

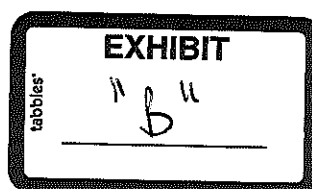
**WHEREAS**, permanent acquisitions of sanitary sewer easements for sewer purposes will be necessary for the construction of the Project; and

**WHEREAS**, Caln Township Municipal Authority has been unable to agree with Irene Ollie Newman, Virgil H. Newman (Decreased), Marjorie May Newman, and James P. Waltz, the owners of the property that is the subject of this condemnation as to acquisition and the price for damages, if any; and

**WHEREAS**, in accordance with law, Caln Township Municipal Authority is authorized to acquire the property rights referred to in the Declaration of Taking through eminent domain proceedings; and

**WHEREAS**, it is the intention of Caln Township Municipal Authority to proceed with this condemnation.

**NOW THEREFORE, BE IT HEREBY RESOLVED** by the Board of Directors of the Caln Township Municipal Authority, Chester County, Commonwealth of Pennsylvania, as follows:



1. The Authority Solicitor is hereby authorized and directed to proceed by means of filing a Declaration of Taking and necessary auxiliary documents to acquire pursuant to the power of eminent domain such right title or interest, rights-of-way, and easements on and under the lands hereinafter described, within the areas and along the routes designated as are necessary to lay, install, construct, operate, replace and maintain said sanitary sewer force main and pipelines and their accessories and appurtenances, together with all rights of ingress, egress and regress in, to, over, upon, through, along and from said land, necessary or convenient for full and complete use by the Caln Township Municipal Authority of the said right, title, or interest, rights-of-way, and easements, and for the exercise of said rights and privileges to lay, construct, replace, enlarge, renew, repair, maintain, inspect, make connections with and maintain perpetually a force main and pipelines with accessories and appurtenances, including equipment, fences, driveways, surface markers, access manholes, valve boxes and conduits; to clear and keep cleared all trees, roots, brush and other obstructions from the surface and subsurface, to maintain depth of cover, and to install gates and stiles in any fence crossing said land for the public purpose of constructing, replacing, enlarging, renewing, repairing, and maintaining, said force main and its accessories and appurtenances, in, on, to, upon and over, a portion of certain lands as more specifically described in the legal description of a 20' Wide Sanitary Sewer Easement prepared by Gilmore & Associates, Inc., marked Exhibit A attached hereto and incorporated by reference as if set forth fully herein, now or late of Irene Ollie Newman, Virgil H. Newman (Deceased), Marjorie May Newman, and James P. Waltz, being a portion of Uniform Parcel Identification No. 39-3G-31, and being the property identified in the Plan of "Sanitary Sewer Easement" prepared by Gilmore & Associates, Inc., dated June 27, 2016, attached hereto as Exhibit B and incorporated by reference as if set forth fully herein, including but not limited to, any and all rights, covenants, restrictions, easements and rights-of-way as may be necessary and convenient for the full enjoyment and use of said public sanitary sewer easement.

2. The Chairman or Vice Chairman of the Authority is hereby authorized to execute in the name of the Authority and on its behalf said Declaration of Taking and necessary ancillary documents.

3. The Authority Solicitor is further authorized to take such action as may be necessary and appropriate and to take such additional action, including negotiating with the owner; accepting deeds or easements in lieu of condemnation; making payment of estimated just compensation, if any, in such amounts as may be determined to be appropriate; and engaging such

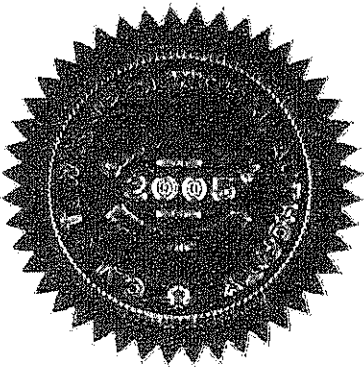


consultants, appraisers, engineers, and others as may deem necessary and appropriate to acquire said sanitary sewer easement.

4. All prior actions of the Authority, the Board of Directors, the Authority Solicitor, and Authority employees and consultants with respect to acquisition of the easement, and all matters relevant thereto, are hereby approved, confirmed and ratified. The Authority Solicitor is authorized and directed to take all such action as may be necessary and appropriate to implement this Resolution.

5. This Resolution is effective immediately.

**RESOLVED** this 12th day of December, 2016.



**BOARD OF DIRECTORS OF  
CALN TOWNSHIP MUNICIPAL AUTHORITY**

A handwritten signature in dark ink, appearing to read "Paul Mullin", written over a horizontal line.

Paul Mullin, Chairman

A handwritten signature in dark ink, appearing to read "George Chambers", written over a horizontal line.

George Chambers, Vice Chairman

A handwritten signature in dark ink, appearing to read "John D. Contento", written over a horizontal line.

John D. Contento, Treasurer

A handwritten signature in dark ink, appearing to read "Noel Bernard", written over a horizontal line.

Noel Bernard, Member

A handwritten signature in dark ink, appearing to read "Tony DiSanto", written over a horizontal line.

Tony DiSanto, Member

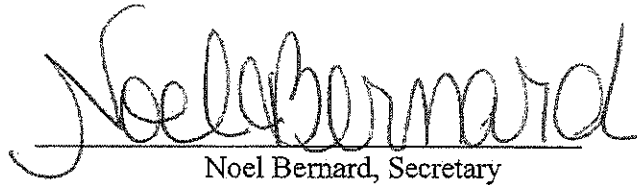
**CERTIFICATE OF SECRETARY**

I certify that:

I am the duly appointed and acting Secretary of the Board of Directors of the Caln Township Municipal Authority, County of Chester, Commonwealth of Pennsylvania, a duly organized and existing municipal authority and body corporate and politic in the Commonwealth.

The foregoing is a true copy of a Resolution duly adopted by the Board of Directors of the said Authority at a public meeting legally convened and conducted on December 12, 2016 and entered into the minutes of such meeting.

Date: December 12, 2016

  
Noel Bernard, Secretary

## **EXHIBIT "A"**

[Being the legal description of a 20' Wide Sanitary Sewer Easement through lands n/l of Irene Ollie Newman, Virgil H. Newman (Deceased), Marjorie May Newman, and James P. Waltz, Caln Township, Chester County, PA prepared by Gilmore & Associates, Inc.]

**PROPOSED SANITARY SEWER EASEMENT THROUGH**  
**1107 SCOTT DRIVE LEGAL DESCRIPTION**

ALL THAT CERTAIN tract of land situated in the Township of Caln, County of Chester, Commonwealth of Pennsylvania as shown on an exhibit entitled "Proposed 20' Wide Sanitary Sewer Easement-1107 Scott Drive", dated June 21, 2016, prepared by Gilmore & Associates, Inc., of Trappe, Pennsylvania, and bounded and described as follows to wit.

BEGINNING at a point along the northerly right of way of Scott Drive, said point also being a southwesterly property corner of lands n/l of Irene and Virgil Newman (Parcel #3903G00310000, DB 1567, Pg 364), thence; from said POINT and PLACE of BEGINNING, proceeding along the common dividing line between said lands of Irene and Virgil Newman and lands n/l of Sanket Wani (Parcel #3903G00100000, DB 7393, Pg 1119) **North 25°19'34" East**, a distance of **139.01 feet** to a point, thence; proceeding along the common dividing line between said lands of Irene and Virgil Newman and lands n/l of William J. DiFabio (Parcel #3903G00120000, DB 6245, Pg 478) **North 45°43'34" East**, a distance of **59.62 feet** to a common property corner of said lands of Irene and Virgil Newman and lands of William J. DiFabio, thence; proceeding along the common dividing line between said lands of Irene and Virgil Newman and lands n/l of Anthony Mark Adams (Parcel #3903G00290000, DB 4719, Pg 731) **South 46°40'26" East**, a distance of **20.17 feet** to a point, thence; proceeding through said lands of Irene and Virgil Newman the following two (2) courses and distances:

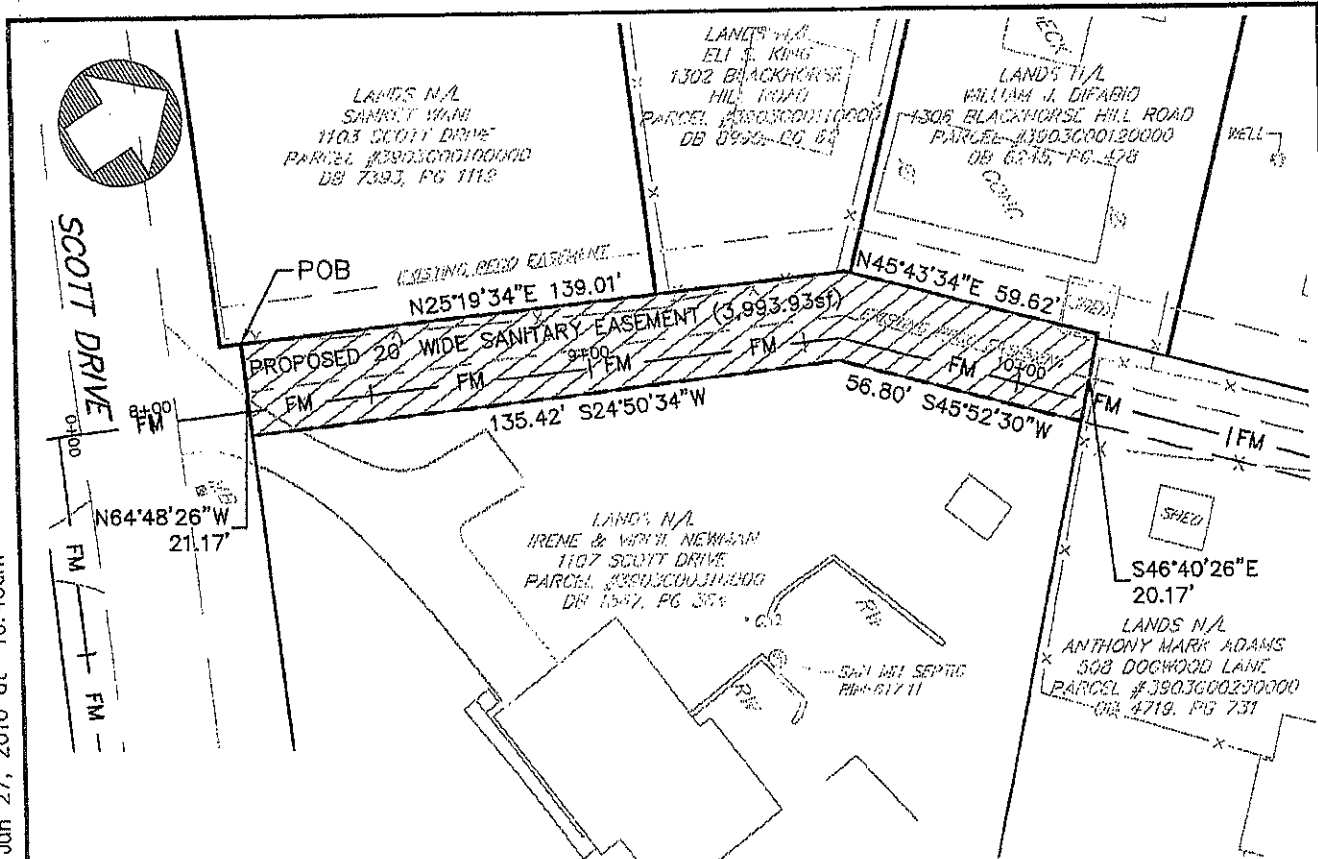
- 1) **South 45°52'30" West**, a distance of **56.80 feet** to a point, thence;
- 2) **South 24°50'34" West**, a distance of **135.42 feet** to a point on the above-mentioned right of way of Scott Drive, thence; proceeding along said right of way **North 64°48'26" West**, a distance of **21.17 feet** to the POINT and PLACE of BEGINNING.

CONTAINING 3,993.93 Sq. Ft. (More or Less)

## **EXHIBIT “B”**

[Being the plan of Sanitary Sewer Easement through lands n/l of Irene Ollie Newman, Virgil H. Newman (Deceased), Marjorie May Newman, and James P. Waltz, Caln Township, Chester County, PA prepared by Gilmore & Associates, Inc., dated June 21, 2016, Last Revised June 27, 2016.]

1506032T Proposed Easement.dwg Layout: 1107 Scott Plotted By: tduffy, on Mon Jun 27, 2016 at 10:45am



**GENERAL NOTES:**

1. THE SITE FEATURES AND TOPOGRAPHY AS SHOWN ARE BASED ON A FIELD SURVEY PERFORMED BY GILMORE & ASSOCIATES INC. IN DECEMBER OF 2015.
2. THE PROPERTY LINES SHOWN ARE BASED ON EXISTING GIS DATA AND ARE CONSIDERED TO BE APPROXIMATE. NEITHER TITLE RESEARCH NOR BOUNDARY SURVEY WERE PERFORMED IN PREPARATION OF THESE PLANS. ADDITIONAL EASEMENTS, RESTRICTIONS AND/OR COVENANTS MAY APPLY.

**PROPOSED 20' WIDE SANITARY SEWER  
EASEMENT EXHIBIT-1107 SCOTT DRIVE  
DOGWOOD/SCOTT DRIVE SEWER EXTENSION  
CALN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA**



**GILMORE & ASSOCIATES, INC.**  
ENGINEERING & CONSULTING SERVICES

184 WEST MAIN STREET, SUITE 300, TRAPPE, PA 19426 • (610) 489-4949 • www.gilmore-assoc.com



DESIGNED BY: TJD	DRAWN BY: DAB	CHECKED BY: DJS	JOB NO.: 201506032T
			DATE: 06/21/2016
			SCALE: 1"=40'

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: JAMES P. WALTZ : Chapter 13  
Debtor : Case No. 16-15811-mdc

**ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, upon consideration of the Motion of Caln Township Municipal Authority (the "Movant") for Relief from Automatic Stay pursuant to § 362(d), it is hereby **ORDERED** that the Motion is **GRANTED**.

It is further **ORDERED**, that the Automatic Stay afforded by § 362(a) of the Bankruptcy Code be, and hereby is, **VACATED**, to the extent necessary to permit the Movant to exercise its rights pursuant to applicable state law, as to the real property located at 1107 Scott Drive, Coatesville, Pennsylvania 19302 by commencing or continuing a proceeding to condemn its property thereupon.

BY THE COURT:

\_\_\_\_\_  
Magdeline D. Coleman, Bankruptcy Judge

William C. Miller, Trustee  
P.O. Box 1229  
Philadelphia, PA 19105

Debtors Attorney:  
Joseph F. Claffy  
Joseph F. Claffy & Associates  
26 S. Church Street  
West Chester, PA 19382

Debtor:  
James P. Waltz  
1107 Scott Drive,  
Coatesville, PA 19320

Attorney for PNC Bank, N.A.  
Lauren B. Karl  
KML Law Group, P.C.  
Spectra II  
2591 Wexford-Bayne Road, Suite 201  
Sewickley, PA 15143

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: JAMES P. WALTZ : Chapter 13  
Debtor : Case No. 16-15811-mdc

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on June 1, 2017, I have served a true and correct copy of the foregoing Motion for Relief from Automatic Stay via first-class mail, postage prepaid upon the following:

Joseph F. Claffy  
Joseph F. Claffy & Associates, P.C.  
26 South Church Street  
Suite 1 South  
West Chester, PA 19382  
(Attorney for Debtor)

Lauren B. Karl  
KML Law Group, LLC  
Spectra II  
2591 Wexford-Bayne Road, Suite 201  
(Counsel for PNC Mortgage, a Division of PNC, NA)

William C. Miller  
Chapter 13 Trustee  
1234 Market Street  
Suite 1813  
Philadelphia, PA 19107

LAMB MCERLANE, PC

Dated: June 1, 2017

By: /s/ Guy A. Donatelli  
Guy A. Donatelli  
Pa. I.D. # 44205  
24 East Market Street  
West Chester, PA 19381  
610-430-8000  
Attorney for Caln Township  
Municipal Authority